

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-10-005703

WALTER HALL ET AL VS JANICE HICKS

**SYSTEM ID: @2331245
JANICE HICKS
28451 LAYTON DAVIS RD
MILLSBORO DE 19966**

Appearances: All parties appeared *pro se*.

Before: William P. Wood, John C. Martin and Christopher A. Bradley,
Justices of the Peace.

Martin for the Court

NOTICE OF JUDGMENT/ORDER

The Court has entered a judgment or order in the following form:

On December 1, 2010 the plaintiffs filed this action seeking to recover unpaid rent, unpaid electric charges and possession of the property located at 28451 Layton Davis Road, Millsboro, Delaware. A trial was held on December 20, 2010 and on December 23, 2010 judgment was entered for unpaid rent on behalf of the plaintiff; however, possession was awarded to the defendant. On December 28, 2010 the plaintiff filed a timely appeal pursuant to 25 Del.C. §5717 and a trial *de novo* was held on February 7, 2011. This is the decision of the three Judge Panel hearing the appeal.

HISTORY

Mr. Hall testified that the plaintiffs had an oral agreement with the defendant for two years concerning her rental of the subject property. The monthly rent was \$400.00, which was reduced from a higher amount because the defendant and a friend who also lived in the property agreed to make repairs to it during their tenancy. The defendant also agreed to pay 50% of the electric bill for the property because there was a separate tenant there too. The defendant's friend only stayed at the property for several months and no repairs were actually made. The plaintiffs believed that another friend of the defendant moved in with her and on September 6, 2010 they went to the property and told the defendant that her rent would increase to \$500.00 per month because of this. The defendant said that she would not pay the increase and a disturbance occurred during which the defendant called the police.

The next day, the plaintiffs called their attorney and it was agreed that the attorney would send the defendant a letter terminating her lease upon sixty days notice. Before this letter was sent, the defendant, by letter dated September 15, notified the plaintiffs that she would not pay any rent increase for this property until a list of repairs were completed. The plaintiffs' attorney sent the defendant the sixty day notice by letter dated September 17. On September 22, Mr. Hall hand delivered directly to the defendant a copy of the attorney's letter.

After the previous trial in this case, the defendant paid part of her December rent, which the plaintiffs claimed at \$400.00 per month but she still owes a balance for December of \$103.30. She paid her January rent but owes February rent. She also owes her 50% share of the December electric bill of \$240.00 and the January bill of \$235.47.

The defendant testified that after living at this residence for two years, her problem with the plaintiffs began when she got a new boyfriend. This person did not live with her but only stayed at the residence to provide child care. She became upset when the plaintiffs tried to raise the rent because of this person even though he did not live with her. By letter dated September 15, she refused to pay any rent increase until a list of repairs to the residence was completed. She received the notice letter from the plaintiff's attorney when it was hand delivered to her on September 22. Then she went to the County's Office of Planning and Zoning to complain about her residence and hired a home inspector to document the problems with the home. She believed that the plaintiffs' action to terminate her tenancy was based on her complaint to the County and the list of demands that she made for home repairs.

The defendant also testified that she did not believe she owed the electric bill because there is one other tenant and a second dwelling unit using the same electric service and she had no way to determine if she was being fairly charged for her electric usage.

DISCUSSION

25 *Del.C.* §5106(b) provides that where no term for a rental agreement is expressly provided, it shall be construed to be for a month-to-month term and the Court finds that this term applies to the parties' agreement. Subsection (d) provides that a month-to-month rental agreement can be terminated by either party by giving a minimum of sixty days written notice with such period beginning on the first day of the month following actual notice. Since the written notice was given no later than September 22, according to the testimony of both parties, it was effective as of October 1 and the period ended November 30. Since this action was filed December 1, the notice met the time requirements of this statute and it was otherwise valid. Therefore, the plaintiffs are entitled to possession of the property. There was no contest that the defendant owed December rent of \$103.30 plus February rent. February rent to the date of this judgment is \$133.33 and so the total rent owed is \$236.63.

Section 25 *Del.C.* §5312 provides that a landlord shall not separately charge a tenant for a utility service unless such service is separately metered. The defendant testified that she had no way to determine how much of this property's electric bill was due to her usage since one other tenant and a second dwelling unit all used the same electric service. The Court finds that since the plaintiffs did not separately meter the defendant's dwelling area, they cannot recover any of the electric charges attributed to her.

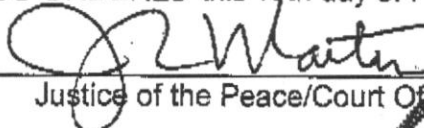
Finally, the defendant argued that the plaintiffs engaged in retaliatory action to terminate her tenancy because she complained to the County about her residence and demanded that certain repairs be made. Retaliatory acts are prohibited by 25 Del.C. §5516. The testimony presented by both parties showed that a verbal disagreement occurred between the parties on September 6 because of a proposed rent increase. The next day, the plaintiffs contacted their attorney and it was agreed that a notice letter would be sent to the defendant terminating her tenancy. By the defendant's own testimony, her complaint to the County and her written demands for repairs happened after this date.

Therefore, after carefully considering the actions listed in the above cited statute that form the basis of a retaliatory action and the facts of this case, the Court finds that none of these actions took place here and so no retaliatory action was taken by the plaintiffs. Rather, the plaintiffs have pursued the termination of a periodic tenancy, which they had a right to do.

ORDER

After considering all the evidence presented, the Court enters judgment on behalf of the plaintiffs and against the defendant in the amount of \$236.63 plus court costs of \$40.00, post judgment interest at the legal rate of 5.75% per annum and per diem rent of \$13.33 to the date of actual possession. Possession of the rental unit is also awarded to the plaintiffs.

IT IS SO ORDERED this 10th day of February, 2011


Justice of the Peace/Court Officer (SEAL)

